

Decision 03-04-008 April 3, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company for Authority Pursuant to Public Utilities Code Section 851 to Sell Cushion Gas in its Aliso Canyon and La Goleta Storage Fields. (U 904 G)

Application 01-04-007
(Filed April 9, 2001)

OPINION GRANTING INTERVENOR COMPENSATION

1. Summary

This decision grants intervenor compensation to The Utility Reform Network (TURN) in the amount of \$16,579.04 for its substantial contributions to Decision (D.) 01-06-086 and D.02-11-028. Southern California Gas Company (SoCalGas) is ordered to pay this amount to TURN.

2. Background

SoCalGas filed its application with the Commission on April 9, 2001. The application sought authorization for SoCalGas to make design changes at its Aliso Canyon and La Goleta underground natural gas storage fields. The design changes would allow SoCalGas to free up and reclassify 14 billion cubic feet (Bcf) of cushion gas as working gas available for sale at these two storage fields, while providing the same level of deliverability with less cushion gas. In addition, the removal of 7 Bcf of cushion gas from each of the fields will allow SoCalGas to offer more working gas inventory space for customers. The design changes were to be accomplished through the drilling of new wells and the rework of existing wells.

TURN filed a protest to SoCalGas' application.

A prehearing conference was held on May 30, 2001 to discuss the scheduling of the proceeding. The scoping memo and ruling for this proceeding was issued on June 5, 2001, which stated that the proceeding would be considered in two phases. Among other issues, the first phase was to consider whether SoCalGas should be authorized to perform the well drilling and related work, whether the cushion gas should be reclassified as working gas and allowed to be sold, and whether the Commission should impose any restrictions on whom SoCalGas could sell the reclassified cushion gas to. The second phase of the proceeding was to address the ratemaking treatment for the gas sale proceeds.

In D.01-06-086, the Commission authorized SoCalGas to perform the redesign work, and to reclassify 7 Bcf of cushion gas at Aliso Canyon and 7 Bcf of cushion gas at La Goleta as working gas available for sale. D.01-06-086 prohibited SoCalGas from selling the reclassified gas until the Commission directed it to do so on the terms and conditions specified in a future decision.

Ordering paragraph 2 of D.01-06-086 solicited comments on whether any restrictions should be imposed on SoCalGas with respect to the sale of the 14 Bcf of gas, and the advantages or disadvantages of the various proposals to restrict the sale of the reclassified cushion gas. After comments were filed, a draft decision describing what should be done with the 14 Bcf of gas was placed on the Commission's December 6, 2001 agenda for consideration. An alternate to the draft decision was also prepared. At the Commission meeting of March 6, 2002, both the draft decision and the alternate were withdrawn from the agenda.

After the withdrawal of the two agenda items, an assigned Commissioner's ruling was issued on April 11, 2002. The ruling stated that the

“sense of urgency in selling the 14 Bcf of gas has now passed,” and there was an opportunity “to consider the terms and conditions of the sale together with the ratemaking issues that are currently scheduled for Phase 2.” The ruling sought comments on how the Commission should proceed.

On June 7, 2002, an assigned Commissioner’s ruling was issued which set a schedule for addressing both the sale of the reclassified gas and the Phase 2 issues, as well as issues about the carrying costs associated with the delay in issuing a decision authorizing the sale of the gas, the total cost of the project, and the water intrusion/storage capacity issues.

The evidentiary hearing was held on July 29, 2002. The matter was submitted with the filing of reply briefs on August 29, 2002. The proposed decision of the assigned Administrative Law Judge (ALJ) was mailed on October 8, 2002. Comments to the proposed decision were filed in October and November 2002, and an en banc oral argument was held before the Commission on November 4, 2002. The Commission adopted D.02-11-028 on November 7, 2002.

D.02-11-028 adopted the “60/40” proposal of the Office of Ratepayer Advocates (ORA) to transfer 5.88 Bcf of the 14 Bcf of reclassified gas to the core at book value, and allocate the remaining 8.12 Bcf of gas to noncore customers in the amount of 2.52 Bcf and 5.6 Bcf to SoCalGas. The 8.12 Bcf was to be sold on the open market, and the proceeds used to reimburse SoCalGas for the book cost of 8.12 Bcf of gas and the project costs of \$23 million. Any remaining proceeds would be split between shareholders (69%) and noncore customers (31%).

D.02-11-028 also adopted SoCalGas’ recommendation to classify, as part of the noncore unbundled storage program, the additional 11 to 14 Bcf of storage capacity created by the project.

TURN timely filed its request for compensation on January 13, 2003. No party filed response to TURN's request for compensation.

3. Requirements for Award of Compensation

The applicable intervenor compensation rules are found in Public Utilities Code Section 1801 and following, and in Article 18.8 of the Commission's Rules of Practice and Procedure.¹ In order for the Commission to award compensation to a "customer" for preparation and participation in a proceeding, the customer must comply with Section 1804 and satisfy both of the following requirements:²

- "(a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.
- "(b) Participation or intervention without an award of fees or costs imposes a significant financial hardship."
(Section 1803.)

Section 1804 provides in part that a notice of intent to claim compensation must be filed by the customer. That notice of intent must include a statement of the nature and extent of the customer's planned participation, and an itemized estimate of the compensation that the customer expects to request. The notice of

¹ Unless otherwise stated, all statutory references are to the Public Utilities Code.

² A "customer" is defined in Section 1802(b) to mean the following: " 'Customer' means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, but does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding."

intent may also include a showing by the customer that participation in the proceeding would pose a significant financial hardship.

On June 29, 2001, TURN filed its notice of intent to claim compensation. TURN elected to make its showing of significant financial hardship in that notice of intent by referencing the ruling issued in Application 00-09-002, wherein TURN received a finding of significant financial hardship. Under Section 1804(b)(1), that previous finding entitles TURN to a rebuttable presumption of eligibility for compensation in this proceeding. No one challenged this presumption. As a result, TURN has made a showing of significant financial hardship. In an October 2, 2001 ALJ ruling, TURN was found eligible for an award of compensation in accordance with Section 1804(b)(1). Thus, TURN has satisfied the eligibility and significant financial hardship requirements and is eligible to seek an award of compensation in connection with its contribution to D.01-06-086 and D.02-11-028.

Following the issuance of D.02-11-028, TURN timely filed its request for an award of compensation on January 13, 2003.

4. TURN's Substantial Contribution

The next issue to address is whether TURN made “a substantial contribution to the adoption, in whole or in part, of the commission’s order or decision.” (Section 1803(a).) The term “substantial contribution” is defined in subdivision (h) of Section 1802 as follows:

“ ‘Substantial contribution’ means that, in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in

a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

If the person requesting compensation is found to have made a substantial contribution, then the Commission must describe the substantial contribution and determine the amount of compensation to be paid. (Section 1804(e).)

TURN's June 29, 2001 notice of intent to claim compensation identified the following issues that it wanted to address in this proceeding.

- The need for Section 851 authorization to reclassify and sell the cushion gas;
- The proper disposition of the reclassified gas;
- The allocation of any gain on sale; and
- The classification of the additional storage capacity created by the well improvements.

TURN asserts in its request for compensation that it made a substantial contribution to D.01-06-086 by arguing in its protest that Section 851 approval was required in order for the Commission to reclassify and sell the cushion gas. TURN points out that D.01-06-086 addressed the Section 851 argument and concluded that Section 851 approval was required because the cushion gas was being used in SoCalGas' storage operations.

TURN contends that it made two substantial contributions to D.02-11-028. First, TURN addressed the benefits of transferring all of the reclassified cushion gas to core customers, including the tax benefit of such a transfer. TURN's proposal to transfer all of the gas to the core would have resulted in net proceeds of \$25.6 million to the core rather than a net gain, before a 50/50 split between shareholders and ratepayers, of \$15.2 million under SoCalGas' proposal.

Although the Commission rejected the proposals of SoCalGas and TURN to sell the reclassified gas, it adopted the 60/40 proposal of the ORA. According to TURN, the net difference between its proposal and ORA's 60/40 proposal was only \$5.2 million.

The second contribution that TURN asserts it made to D.02-11-028 is that it provided an analysis showing that the incremental revenues from the additional unbundled storage are likely to be three to four times higher than forecast by SoCalGas, and that the expansion of unbundled storage would benefit shareholders and noncore customers. TURN states that the Commission in D.02-11-028 agreed with TURN's evaluation of the potential revenues from unbundled storage and concluded that "SoCalGas underestimates the value of the additional storage capacity and the associated injection and withdrawal services." (D.02-11-028, p. 31.) TURN also states the Commission agreed with TURN that noncore customers will benefit from the expanded storage capacity.

A review of D.01-06-086, D.02-11-028 and the related pleadings, reveals that several of TURN's proposals or analyses substantially assisted the Commission in the creation of D.01-06-086 and D.02-11-028. Although D.01-06-086 did not reference TURN's Section 851 argument, TURN's protest argued that Section 851 approval was needed for the design work. The Section 851 issue was also identified in the June 5, 2001 scoping memo, and specifically discussed in D.01-06-086 at pages 21 to 26.

With respect to D.02-11-028, TURN advocated that the tax consequences of each proposal for the sale or transfer of the reclassified gas should be considered by the Commission. This was one of the considerations that the Commission used in its weighing process as to which proposal to adopt. (D.02-11-028, pp. 19, 29-31.) The Commission also considered and adopted TURN's argument

regarding the incremental revenue that SoCalGas would receive from the additional storage capacity. (*See* D.02-11-028, pp. 20-22.) The Commission determined that “Based on the testimony, we believe that SoCalGas underestimates the value of the additional storage capacity and the associated injection and withdrawal services,” and that this additional storage capacity would provide “substantial monetary benefits to SoCalGas’ shareholders which cannot be ignored.” (D.02-11-028, pp. 31-32.)

Accordingly, we find that TURN’s participation made a substantial contribution to D.01-06-086 and D.02-11-028.

TURN asserts that its participation did not duplicate the showings of other parties. TURN states that its recommendations were generally similar to those of ORA, and that TURN supported ORA’s primary proposal to transfer all of the reclassified gas to core customers. TURN minimized its participation in order not to duplicate ORA’s work. TURN, however, contends that it offered independent analysis concerning the tax benefits of a transfer of gas to core customers and the benefits to SoCalGas from the additional unbundled storage capacity. TURN also points out that Section 1802.5 allows the Commission to award full compensation even when a party’s participation has overlapped in part with the showings made by other parties.

Although some of the issues that TURN raised were similar to ORA’s issues, TURN’s independent analyses of the issues made a substantial contribution to both decisions. Thus, all of TURN’s activities in this proceeding should be fully compensated

5. Reasonableness of the Requested Compensation

Having found that TURN made a substantial contribution, the next step is to determine the amount of compensation that should be paid. (Section 1804(e).)

In D.98-04-059 [79 CPUC2d 628], the Commission made revisions to the intervenor compensation program, and discussed the “productivity” standard in Section 1801.3. D.98-04-059 states that “the participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation,” and to “demonstrate productivity, a customer should try to assign a reasonable dollar value on the benefits of its participation.” (79 CPUC2d at p. 650.)

TURN estimates that its participation contributed to SoCalGas’ revised proposal to minimize taxes upon sale of the gas, which enhanced the total benefits of SoCalGas’ proposal by about \$10 million. TURN also contends that its participation contributed to the adoption of ORA’s 60/40 proposal, which enhanced core ratepayer benefits by over \$13 million, as compared to SoCalGas’ proposal. We find that the costs of TURN’s participation are reasonable in relation to the benefits ratepayers realized through TURN’s participation.

TURN requests an award of \$16,579.04 for work performed in this proceeding. This amount is made up of \$15,641.75 for attorneys’ time and \$937.29 for direct expenses. TURN submitted detailed logs showing the time expended by TURN’s attorneys and the direct expenses that were incurred. The total hours claimed are 73.05 hours, which includes discounting the time spent on the request for compensation by 50%. The hourly rate requested by TURN for Marcel Hawiger’s time is \$190, and \$385 for Michel Florio’s time.³

³ These hourly rates are for fiscal year 2001/2002, which the Commission approved for TURN’s attorneys in D.01-10-008 and D.02-09-040. Although some of the attorneys’ time was incurred in the 2002/2003 fiscal year, due to the small number of hours involved, TURN is requesting compensation at the 2001/2002 rates.

We have reviewed the number of hours spent by TURN's attorneys in this proceeding and the associated direct expenses. We find that the direct expenses, the number of hours billed, and the hourly rates to be reasonable. TURN should be awarded compensation in the amount of \$16,579.04.

Section 1804(e) provides that the Commission shall issue a decision on whether a customer has made a substantial contribution within 75 days after the filing of a request for compensation. The Commission in prior decisions has adopted the policy of granting interest on the amount of compensation after the 75th day. In TURN's case, if the award is not paid in full by March 29, 2003, interest should commence on March 30, 2003 and be based on the three month commercial paper rate as reported in the Federal Reserve Statistical Release G.13.

As with all intervenors seeking compensation, TURN is reminded that it is subject to audit or review by the Commission staff. Therefore, adequate accounting records and other necessary documentation must be maintained and retained in support of all claims for intervenor compensation. These records should identify specific issues for which TURN requests compensation, the actual time spent by each person, the applicable hourly rate, fees paid, and any other costs for which compensation has been claimed.

6. Waiver of Comment Period

Since this decision addresses a request for compensation, the public review and comment on the draft decision is waived pursuant to Section 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure (Rules).

7. Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner and John S. Wong is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. TURN was found eligible for an award of compensation in the October 2, 2001 ALJ ruling.
2. TURN filed a timely request for an award of compensation.
3. A review of D.01-06-086, D.02-11-028 and the related pleadings reveals that several of TURN's proposals or analyses substantially assisted the Commission in the creation of D.01-06-086 and D.02-11-028.
4. TURN made a substantial contribution to D.01-06-086 and D.02-11-028.
5. The costs of TURN's participation in this proceeding are reasonable in relation to the benefits ratepayers realized through TURN's participation.
6. The hourly rates for TURN's attorneys for fiscal year 2001/2002 were approved in D.01-10-008 and D.02-09-040.
7. The direct expenses, the number of hours billed, and the hourly rates charged are reasonable.

Conclusions of Law

1. Although some of the issues that TURN raised were similar to ORA's issues, TURN's independent analyses of the issues made a substantial contribution to both decisions, and all of TURN's activities should be fully compensated.
2. TURN should be awarded \$16,579.04 for its substantial contribution to D.01-06-086 and D.02-11-028.
3. SoCalGas should pay TURN \$16,579.04 plus any applicable interest.
4. Pursuant to Section 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules, the 30-day public review and comment period for today's decision should be waived.

5. This order should be effective today so that TURN may be compensated without undue delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$16,579.04 in compensation for its substantial contribution to Decision (D.) 01-06-086 and D.02-11-028.
2. Southern California Gas Company (SoCalGas) shall, within 30 days of this order, pay to TURN the amount of \$16,579.04. SoCalGas shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, beginning March 30, 2003 and continuing until full payment is made.
3. The public review and comment period for today's decision is waived.
4. This proceeding is closed.

This order is effective today.

Dated April 3, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Compensation Decision Summary Information

Compensation Decision(s):	D0304008
Contribution Decision(s):	D0106086 and D0211028
Proceeding(s):	A0104007
Author:	ALJ Wong
Payer(s):	The Utility Reform Network

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Disallowance
The Utility Reform Network	1/13/03	\$16,579.04	\$16,579.04	

Witness Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	\$190	2001-2002	\$190
Michel	Florio	Attorney	The Utility Reform Network	\$385	2001-2002	\$385